

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 576 OF 2023

The New India Assurance Co. Ltd. }
Baramati Branch, Bhigwan Chowk, Taluka- }
Baramati, District-Pune, Thr. Its Legal Hub }
TP 41 -B, 4th Floor, Maker Tower, }
E-Cuffe Parade, Mumbai-400 005. } **...Appellant**

Versus

1. Smt.Shila Vijay Jagtap }
Aged-33 years, Occ : Household }
2. Suraj Vijay Jagtap }
Aged-17 years, Occ : Education }
3. Sneha Vijay Jagtap }
Aged-14 years, Occ : Education, }
(Respondent Nos.2 and 3 being minor, on }
his behalf His Mother Respondent No.1) }
4. Saraswati Sambhaji Jagtap }
Aged-70 years, Occ : Nil }
All R/o. Undawadi, K.P. Taluka-Baramati, }
District-Pune. }
5. Shri.Sunil Rameshlal Jaiswal }
Aged-42 years, Occ : Business }
R/at Lihakhed, Taluka-Sillod, District- }
Augrangabad-431 003. } **...Respondents**

Ms.Poonam Mital, for the Appellant.
Mr.G.S. Jadhav, for Respondent Nos.1 to 4.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant that, deceased was carpenter. No evidence was produced on record to show income of deceased, the Tribunal has considered income of deceased at Rs.8,000/- which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, deceased was carpenter. He owned agricultural land and supplied milk to local dairy. His monthly income was more than Rs.8,000/-, but the Tribunal has considered his income at Rs.8,000/-, which is proper. The learned counsel further submitted that the Tribunal has awarded consortium against to Claimant No.2 only. There are four Claimant's. The other three Claimant's are entitled for consortium amount. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Baramati.

5. While dealing with the issue of income of deceased the Tribunal has observed that, the deceased was carpenter. He owned agricultural land and was supplying milk to local dairy. The 7/12th extract was produced on record at Exhibit-63, which shows that the deceased was owner of the agricultural land. Considering the evidence on record the Tribunal has considered monthly income of deceased at Rs.8,000/- per month. I do not find infirmity in it.

6. In my view the deceased was carpenter. It means he was skilled worker. The agricultural land was standing in his name. He was maintaining family of five members. Hence, I do not see merit in the contention that, the income of deceased considered on higher side. While awarding compensation the Tribunal has awarded consortium amount to Claimant No.1 only. As per view of Hon'ble Apex Court in case of *Magma General*

*Insurance Co. Ltd. V/s. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount. There are three Claimants it comes to Rs.1,44,000/-. The Claimant's are entitled for this amount.

7. In view of the above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are entitled for enhanced amount of Rs.1,44,000/- @ 7.5% per annum from 1st November 2017 till realization of the amount.
- (iii) The Appellant-Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
- (iv) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per Rules.
- (v) Pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)

1 2018 ACJ 2782 (SC)